

## **CHAPTER 15**

### **LIABILITY OF ACCOUNTABLE OFFICERS**

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APPENDIX A: Authority to Relieve Disbursing and Certifying Officials Liability Memo, dtd  
January 28, 2004

## **CHAPTER 15**

### **LIABILITY OF ACCOUNTABLE OFFICERS**

#### **I. REFERENCES.**

- A. 10 U.S.C. § 2773a (authorizing DOD to hold accountable officials liable).
- B. 31 U.S.C. § 3325 (requiring certifying officers within DOD).
- C. 31 U.S.C. § 3528 (specifying when the Comptroller General may relieve certifying officers from liability).
- D. 31 U.S.C. § 3527 (specifying when the Comptroller General may relieve other accountable officers from liability).
- E. Dep't of Defense Reg. 7000.14-R, Financial Management Regulation, Volume 5, Disbursing Policies and Procedures [hereinafter DOD 7000.14-R, vol. 5]. Available at <http://www.dtic.mil/comptroller/fmr>.
- F. DFAS-IN (Defense Finance and Accounting Service-Indianapolis) Reg. 37-1, Finance and Accounting Policy Implementation (Jan. 2000).
- G. DFAS-DE (Defense Finance and Accounting Service-Denver) 7010.1-R, General Accounting and Finance Systems at Base Level (15 Feb. 1991), ch. 11.

#### **II. TYPES OF ACCOUNTABLE OFFICERS.**

- A. Definitions.
  - 1. An accountable officer is any government employee who is responsible for or has custody of government funds. See Lieutenant Commander Michael S. Schwartz, USN, B-245773, May 14, 1992 (unpub.); Mr. Charles R. Hartgraves, B-234242, Feb. 6, 1990 (unpub.).

2. The DOD refers to this broad universe of persons as “accountable individuals.” This includes “all personnel, whether military or civilian, who are certifying officers, accountable officials as defined in [DOD 7000.14-R, vol. 5, ch. 33], and disbursing officers. The term also includes deputy disbursing officers, agents, cashiers, and other employees who by virtue of their employment are responsible for or have custody of government funds.” DOD 7000.14-R, vol. 5, Definitions, para. 2. See also, DOD 7000.14-R, vol. 5, ch. 1, para. 010802.B. (defining “Accountable official” as including “DOs, certifying officers, cashiers, procurement officers, departmental accountable officials, and other employees who by virtue of their employment are responsible for the obligation, custody, and payment of government funds.”)
3. “Departmental Accountable Officials” are “[i]ndividuals who are responsible in the performance of their duties for providing to a certifying officer information, data, or services that the certifying officer directly relies upon in the certification of vouchers for payment.” DOD 7000.14-R, vol. 5, ch. 33, para. 330812.
4. Any government officer or employee, military or civilian, who handles government funds physically, even if only once or occasionally, is “accountable” for those funds while they are in his custody. Mr. Melvin L. Hines, B-247708, 72 Comp. Gen. 49 (1992); Finality of Immigration and Naturalization Service’s Decision on Responsibility of Accountable Officer for Physical Losses of Funds, B-195227, 59 Comp. Gen. 113 (1979).
5. Absent statutory authority, agency officials who are not designated “certifying official” are not personally liable for illegal, improper, or incorrect payments. Veteran Affairs – Liability of Alexander Tripp, B-304233, 2005 U.S. Comp. Gen. LEXIS 158 (Aug. 8, 2005); Department of Defense – Authority to Impose Pecuniary Liability by Regulation, B-280764, 2000 U.S. Comp. Gen. LEXIS 159 (May 4, 2000).

B. Certifying Officers and Other Accountable Officers Distinguished.

1. Certifying Officer.

- a. Within DOD, a certifying officer is defined as a “DoD military member or civilian employee of the Department appointed in writing to certify a voucher for payment,” DOD 7000.14-R, vol. 5, Chapter 33, para. 330806. A DOD certifying officer is also defined as “an individual designated to attest to the correctness of statements, facts, accounts, and amounts appearing on a voucher, or other documents.” DOD 7000.14-R, vol. 5, Definitions, para. 15.
- b. Certification is “the act of attesting to the legality, propriety and correctness of a voucher for payment.” DOD 7000.14-R, vol. 5, Chapter 33, para. 330805.

2. Other Accountable Officers. Any other officer or employee, including one not involved directly in government fiscal operations, who has custody or control of federal funds.

- a. Disbursing Officer. One who disburses funds and renders accounts in accordance with laws and regulations governing disbursement of public funds. DOD 7000.14-R, vol. 5, Definitions, p. xxxi. See generally 31 U.S.C. § 3325; DOD 7000.14-R, vol. 5, ch. 2.
- b. Cashier. One appointed to perform limited cash-disbursing functions or other cash-handling operations to assist a finance officer or other subordinate/assistant of the finance officer. DOD 7000.14-R, vol. 5, ch. 2, para. 020603.B. See Mr. David J. Bechtol, B-272615, 1997 U.S. Comp. Gen. LEXIS 270 (May 19, 1997) (disbursing officer and his subordinate cashiers are jointly and severally liable for loss of funds and must separately petition for relief).

c. Other agents and custodians.

- (1) Paying agents are appointed only when adequate payment, currency conversion, or check cashing services cannot otherwise be provided. Paying agents cannot act as purchasing officers. DOD 7000.14-R, vol. 5, ch.2, para. 020604.
- (2) Collection agents receive funds generated from activities such as hospitalization fees and other medical facility charges, rentals, and other charges associated with housing, reproduction fees, and other similar functions. DOD 7000.14-R, vol. 5, ch. 2, para. 020701.
- (3) Imprest fund cashiers make authorized cash payments for purchases of materials and non-personal services, maintain custody of funds, and account for and replenish the imprest fund as necessary. DOD 7000.14-R, vol. 5, ch. 2, para. 020905.A.

### **III. LIABILITY OF ACCOUNTABLE OFFICERS.**

A. Certifying Officers. 31 U.S.C. § 3528; DOD 7000.14-R, vol. 5, ch. 33.

1. A certifying officer:

- a. Is responsible for the correctness of the facts recited in the certificate, or otherwise stated on the voucher or supporting papers;
- b. Is responsible for the legality of the proposed payment under the appropriation or fund involved; and
- c. Is accountable for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certification.

2. Certifying officers must ensure vouchers are computed correctly.

3. Liability attaches when an official makes an erroneous payment based on an improperly certified voucher. Responsibilities and Liabilities of Certifying Officers, B-184145, 55 Comp. Gen. 297 (1975).
- B. Disbursing Officers. 31 U.S.C. § 3325; DOD 7000.14-R, vol. 5, ch. 1, para. 0104.
1. Disbursing officers are:
    - a. Responsible for examining vouchers as necessary to ensure that they are in the proper form, duly certified and approved, and computed correctly on the basis of the facts certified.
    - b. Responsible for disbursing funds only upon, and in strict accordance with, duly certified vouchers.
    - c. Not liable for losses due to improperly calculated vouchers.
  2. Generally, disbursing officers are accountable for illegal, improper, or incorrect payments, as well as account errors, even though they relied on other persons, and those persons actually caused the error. Mr. David L. Gagermeier, B-274364, 1997 U.S. Comp. Gen. LEXIS 157 (Apr. 23, 1997). See DOD 7000.14-R, vol. 5, ch. 1, para. 010503.A.
  3. Note: An older version of DOD 7000.14-R specifically provided that DOD disbursing officers were not liable for payments made in reliance upon properly certified vouchers. DOD 7000.14-R, vol. 5, ch. 1, para. 010501.C (August 1999). The latest version (April 2005) removed that language.

C. DOD Accountable Officials.

1. Previously, DOD 7000.14-R, ch. 33 purported to impose pecuniary liability on “accountable officials” as a matter of policy. “Accountable officials” were defined as personnel “who are designated in writing and are not otherwise accountable under applicable law, who provide source information, data or service (such as a receiving official, a cardholder, and an automated information system administrator) to a certifying or disbursing officer in support of the payment process.” The rationale was (and is) that it is extremely difficult for any single official to ensure the accuracy, propriety, and legality of every payment, and that therefore certifying officers and disbursing officers as a practical matter must rely upon information provided by others in performing this difficult task.
2. However, the GAO held that this regulatory imposition of financial liability against such persons was improper because, unlike certifying officers and disbursing officers, there was no statutory basis for imposing liability against “accountable officials,” and agencies may impose pecuniary liability against someone only if there is a statutory basis for doing so. See, Department of Defense – Authority to Impose Pecuniary Liability by Regulation, B-280764, 2000 U.S. Comp. Gen. LEXIS 159.
3. The 2003 Defense Authorization Act, codified at 10 U.S.C. § 2773a, has since provided that statutory authority. Title 10 § 2773a states that departmental accountable officers may be held financially liable for illegal or erroneous payments resulting from their negligence. See Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314, §1005, 116 STAT 2458, 2631 (2002).
4. Implementing the new law, the new DOD 7000.14-R, ch. 33 (April 2005), para. 3307 provides: “Departmental accountable officials shall be pecuniarily liable for illegal, improper or incorrect payments that result from information, data or services they negligently provide to a certifying officer, and upon which, the certifying officer directly relies in accordance with the provisions of 10 U.S.C. 2773a.”



5. “Departmental Accountable Officials” are defined as “Individuals who are responsible in the performance of their duties for providing a certifying officer information, data, or services that the certifying officers directly relies upon in the certification of vouchers for payment. They are pecuniarily liable for erroneous payments resulting from their negligent actions in accordance with section 2773a of title 10, United States Code.” DOD 7000.14-R, vol. 5, ch. 33, para. 330812.
  6. “Departmental Accountable Officials” include, but are not limited to personnel with certain responsibilities relating to the Government Purchase Card program, temporary duty travel, contract and vendor pay, civilian and military pay, permanent change of station, and Centrally Billed Accounts. DOD 7000.14-R, vol. 5, ch. 33, para. 330302. These include persons such as Agency Program Coordinators (APCs), approving officials, authorizing officials, cardholders, resource managers, fund holders, Automated Information System administrators, contracting officers, receiving officials, personnel officers, employees’ supervisors, and supervisors of time and attendance clerks.
  7. Departmental Accountable Officials are designated by DD Form 577 and are notified in writing of the designation and of their pecuniary liability for all illegal, improper or incorrect payments that result from negligent performance of their duties. DOD 7000.14-R, vol. 5, ch. 33, para. 330505.
- D. “Possessory” Accountable Officers. Those entrusted with funds are liable for any and all losses. There is no liability limitation for these accountable officers. Sergeant Charles E. North--Relief of an Accountable Officer, B-238362, 69 Comp. Gen. 586 (July 11, 1990).
- E. The Nature of Accountable Officer Liability.
1. Accountable officers (with the exception of departmental accountable officials – see paragraph 3 below) are strictly liable for losses or erroneous payments of public funds. They are “insurers” of public funds in their custody, or for which they are otherwise responsible. Liability does not attach for losses due to acts of God or acts of the public enemy. See United States v. Prescott, 44 U.S. 578 (1845); Serrano v. United States, 612 F.2d 525 (Ct. Cl. 1979); Personal Accountability of Accountable Officers, B-161457, 54 Comp. Gen. 112 (Aug. 14, 1974).

2. Lack of fault or negligence, however, may provide a basis for relief from the obligation to repay the loss. See Mr. David J. Bechtol, B-271608, 1996 U.S. Comp. Gen. LEXIS 333 (June 21, 1996); Captain John J. Geer, Jr., B-238123, 70 Comp. Gen. 298 (Feb. 27, 1991); Mr. Anthony Dudley, B-238898, 70 Comp. Gen. 389 (Apr. 1, 1991); Sergeant Charles E. North-Relief of an Accountable Officer, B-238362, 69 Comp. Gen. 586 (July 11, 1990); Personal Accountability of Accountable Officers, B-161457, 54 Comp. Gen. 112 (Aug. 14, 1974).
3. Until April 2005, DOD 7000.14-R, vol. 5, ch. 33, para. 3309 and appendix C, para. G provided that DOD “accountable officials” were not strictly liable, and that no presumption of negligence applied to those personnel. In April 2005, para. 3309 and the entire appendix C were deleted. The statute on which the changes were based clearly provides for a negligence standard, permitting the Secretary of Defense to subject a departmental accountable official to financial liability if the improper payment “was the result of fault or negligence on the part of that departmental accountable official,” 10 U.S.C. § 2773a(c)(1)(B). The current DOD 7000.14-R is far less clear on that point, and is completely silent as to whether there is any presumption of negligence.

#### **IV. PROTECTION AND RELIEF FROM LIABILITY.**

##### **A. Advance Decisions from the Comptroller General.**

1. A certifying officer, disbursing officer, or head of an agency may request an opinion concerning the propriety of a certification or disbursement. 31 U.S.C. § 3529; DOD 7000.14-R, vol. 5, para. 250302; DFAS-DE 7010.1-R, ch. 11, para. 11-9.
2. Upon request, the Comptroller General will decide any question involving:
  - a. A payment the disbursing official or the head of the agency proposes to make; or
  - b. A voucher presented to a certifying official for certification.

3. As of April 2005, DOD does not recognize the statutory authority of the Comptroller General to shield an DOD personnel from financial liability by issuing advance decisions on the use of appropriated funds. DOD 7000.14-R, vol. 5, ch. 1, para. 010801.

- a. DOD 7000.14-R, vol. 5, ch. 1, para. 010802.E. explains:

While an opinion of the CG [Comptroller General] may have persuasive value, it cannot itself absolve an accountable official . . . . The Department of Justice has concluded as a matter of law that the statutory mechanism that purports to authorize the CG to relieve Executive Branch Officials from liability (i.e., 31 U.S.C. §§ 3527, 3528, and 3529) is unconstitutional because the CG, as an agent of Congress, may not exercise Executive power, and does not have the legal authority to issue decisions or interpretations of law that are binding on the Executive Branch.

See, Memorandum, Department of Justice, to Department Employees, subject: Legality of and Liability for Obligation and Payment of Government Funds by Accountable Officers (15 Nov. 1995).

- b. The 1995 DOJ memorandum was based on a 1991 DOJ Office of Legal Counsel opinion which concluded that the statutes were unconstitutional insofar as they purport to empower the Comptroller General to relieve Executive Branch officials from liability. See, Memorandum for Janis A. Sposato, General Counsel, Justice Management Division, from John O. McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Comptroller General's Authority To Relieve Disbursing and Certifying Officials From Liability (Aug. 5, 1991).
- c. The belated (April 2005) DOD action in changing DOD 7000.14-R consistent with the DOJ opinion follows similar action initiated by the Department of Treasury in 2004. See, Memorandum, U.S. Department of Justice, Office of the Assistant Attorney General, to U.S. Department of Treasury General Counsel, subject: Response to Department of Treasury (28 Jan. 2004).

- B. Advance Agency Decisions. See DOD 7000.14-R, vol. 5, ch. 1, para. 0108, and Appendix E.
1. Per the General Accounting Office Act of 1996, Pub. L. 104-316, § 204, 110 Stat. 3826, 3845-46, the following are authorized to issue advance decisions for designated claims categories.
    - a. DOD (DOD General Counsel): military member pay, allowances, travel, transportation costs; survivor benefits; and retired pay.
    - b. Office of Personnel Management (OPM): civilian compensation and leave.
    - c. General Services Administration Board of Contract Appeals (GSBCA): civilian employee travel, transportation, and relocation allowances.
  2. For DOD, as of April 2005, employees may seek an advance decision from the General Counsel concerning the propriety and legality of any obligation or claim presented to them for approval, certification, or payment. DOD 7000.14-R, vol. 5, ch. 1, para. 0108.
    - a. Such advance decisions will “shield” the employee from liability in that DOD will not seek to recover a payment from the employee if the General Counsel issued an opinion advising that the payment could legally be made. DOD 7000.14-R, vol. 5, ch. 1, para. 010802.D.
    - b. DOD 7000.14-R, vol. 5, Appendix E, directs employees to the following responsible offices for advance decisions:
      - (1) Use of appropriated funds: Office of the Secretary of Defense, Office of the Deputy General Counsel (Fiscal).
      - (2) Military members’ pay, allowances, travel, transportation, retired pay, and survivor benefits: Office of the Secretary of Defense, Office of the Deputy General Counsel (P&HP).

- (3) Federal civilian employees' compensation and leave: Office of Personnel Management.
- (4) Federal Civilian employees' travel, transportation and relocation expenses and allowances: General Services Administration, Board of Contract Appeals.

b. For advance decisions regarding the propriety or legality of certifying or paying a questionable voucher or claim, DOD 7000.14-R, vol. 5, ch. 25, para. 2503.B. provides that "All requests for advance decisions shall be forwarded through the General Counsel of the DoD Component or the Defense Finance and Accounting Service (DFAS) to the Deputy General Counsel (Fiscal), Department of Defense (DCG(F)) before referral to any authorized official outside of the Department of Defense (for example, the General Services Administration or the General Accounting Office)." As to the reference to GAO, one should keep in mind that the most recent vol. 5, ch. 25 is dated October 2002; that reference will likely be deleted when chapter 25 is updated in the future.

C. Relief of Non-DOD Certifying Officers. 31 U.S.C. § 3528(b).

- 1. The Comptroller General may relieve a certifying officer from liability if:
  - a. The officer based the improper certification on official records and the officer did not know, or reasonably could not have known, that the information was incorrect; 31 U.S.C. 3528(b)(1)(A). See Relief of Accountable Officer Sally V. Slocum – American Embassy, Brazzaville, Republic of the Congo, B-288284.2, 2003 U.S. Comp. Gen. LEXIS 223 (Mar. 7, 2003); or
  - b. The obligation was in good faith, no law specifically prohibited the payment, and the government received some benefit. 31 U.S.C. § 3528(b)(1)(B). See Environmental Protection Agency, B-262110, Mar. 19, 1997, 97-1 CPD ¶ 131 (certifying officials not required to second-guess discretionary decisions of senior agency officials); Ms. Trudy Huskamp Peterson, B-257893, 1995 U.S. Comp. Gen. LEXIS 337 (June 1, 1995).

2. The Comptroller General will deny relief if the agency did not attempt diligently to collect an erroneous payment.
- D. Relief of Non-DOD Disbursing Officers for Illegal, Improper, or Incorrect Payments. 31 U.S.C. 3527(c).
1. The Comptroller General may, on his own initiative, or on the written recommendation of the head of an agency, relieve a disbursing official responsible for a deficiency in an account because of an illegal, improper, or incorrect payment when the Comptroller General decides that the payment was not made as a result of bad faith or lack of reasonable care by the official.
  2. The Comptroller General may deny relief if the agency did not pursue collection action diligently.
- E. Relief of Other Non-DOD Accountable Officers. 31 U.S.C. § 3527(a).
1. Applicability. The Comptroller General may relieve an accountable officer from liability for the physical loss or deficiency of public money, vouchers, checks, securities, or records when:
    - a. The agency head finds that:
      - (1) The officer or agent was carrying out official duties when the loss or deficiency occurred or the loss or deficiency occurred because of an act or failure to act by a subordinate of the officer or agent; and
      - (2) The loss or deficiency was not the result of fault or negligence of the officer or agent. See Mr. Melvin L. Hines, B-247708, 72 Comp. Gen. 49 (Nov. 3, 1992).
    - b. The loss or deficiency was not the result of an illegal or incorrect payment; and
    - c. The Comptroller General agrees with the decision of the head of the agency.

2. The Comptroller General has delegated to agency heads the authority to resolve irregularities when a loss is less than \$3,000. See GAO, Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, § 8.9.C; Mr. Frank Palmer, B-252809, 1993 U.S. Comp. Gen. 485 (Apr. 7, 1993); Mr. Thomas M. Vapniarek, B-249796, 1993 U.S. Comp. Gen. LEXIS 248 (Feb. 9, 1993); Mr. Melvin L. Hines, B-247708, 72 Comp. Gen. 49 (Nov. 3, 1992).
  3. Alternatively, the Comptroller General may authorize reimbursement of amounts paid by the responsible official as restitution.
- F. Relief of DOD Certifying Officers for Illegal, Incorrect, or Improper Payments. 31 U.S.C. § 3528; DOD 7000.14-R, vol. 5, ch. 6, para. 060903.B.
1. The Secretary of Defense has delegated authority to the Director, DFAS, to make the required determinations and grant or deny relief. DOD 7000.14-R, vol. 5, ch. 6, para. 060903.
  2. The standard for relief of certifying officers under 31 U.S.C. § 3528 (and DOD 7000.14-R, vol. 5, ch. 6, para. 060903.B.):
    - a. The certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information; or
    - b. The obligation was incurred in good faith; no law specifically prohibited the payment; and the U.S. Government received value for payment.
  3. The statute also says that the Comptroller General may deny relief when the Comptroller General decides that the head of the agency did not diligently carry out efforts to recover the payment. 31 U.S.C. § 3528(c). Because DOD 7000.14-R, vol. 5, ch. 6, para. 060903 (January 2004) echoes the statute, it recites as part of the statutory standards “diligent collection efforts were made to recover the payment.” In light of the new (April 2005) changes to DOD 7000.14-R, vol. 5, the practical effect of this portion of the standard is not yet known.

- G. Relief of DOD Disbursing Officers for Illegal, Incorrect, or Improper Payments. 31 U.S.C. § 3527(b)(1)(B); 31 U.S.C. § 3528(b)(1); DOD 7000.14-R, vol. 5, ch. 6, para. 060903.A. See generally Mr. David J. Bechtol, B-272615, 1997 U.S. Comp. Gen. LEXIS 270 (May 19, 1997).
1. The statute provides that the Comptroller General shall relieve an accountable officer of the armed forces who makes an improper, illegal, or incorrect payment, if, after taking a diligent collection action, the Secretary of Defense finds that:
    - a. The payment was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information; or
    - b. The obligation was incurred in good faith; no law specifically prohibited the payment; and the U.S. Government received value for payment.
  2. DOD 7000.14-R, vol. 5, ch. 6, para. 060903.A. provides only this two-prong standard for relief of a disbursing official:
    - a. The payment was not the result of bad faith or lack of reasonable care; and
    - b. Diligent collection efforts by the disbursing officials and the agency were made.
  3. Apparently, the reason DOD 7000.14-R doesn't include the first prong of the statutory standard is because a previous version of DOD 7000.14-R had specifically stated that disbursing officers are not liable for payments properly certified by certifying officers even if the payments turn out to be illegal, improper, or incorrect. See DOD 7000.14-R, vol. 5, ch. 1, para. 010501.C (August 1999 version). That specific language no longer exists in the current version of DOD 7000.14-R, vol. 5, ch. 1.
  4. The Secretary of Defense has delegated authority to the Director, DFAS, to make the required determinations and grant or deny relief. DOD 7000.14-R, vol. 5, ch. 6, para. 060903.



- H. Relief of DOD Disbursing Officers for Physical Losses. 31 U.S.C. § 3527(b)(1)(A); DOD 7000.14-R, vol. 5, ch. 6, para. 060902.
1. The statute provides that the Comptroller General shall relieve a disbursing official of the armed forces who is responsible for the physical loss or deficiency of public money, vouchers, or records when:
    - a. The Secretary of Defense determines that the officer was carrying out official duties when the loss or deficiency occurred;
    - b. The loss or deficiency was not the result of fault or negligence by the official; and
    - c. The loss or deficiency was not the result of an illegal or incorrect payment.
  2. Under the statute, the SECDEF's finding binds the Comptroller General. For this reason, the Comptroller General does not require military departments to forward these relief determinations for approval. GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, § 8.10; Mr. William Duff, B-271859, 1996 U.S. Comp. Gen. 490 (Sep. 26, 1996). Thus, because the Comptroller General did not make the relief decision in cases of physical losses anyway, the April 2005 changes to DOD 7000.14-R, vol. 5 which eliminates DOD's recognition of the Comptroller General's statutory authority to relieve DOD accountable officers, makes no practical difference in cases of physical losses.
  3. The SECDEF has delegated authority to the Director, DFAS, to make the required determinations and grant or deny relief. DOD 7000.14-R, vol. 5, ch. 6, para. 060902.
  4. The term "disbursing official" applies to all DoD personnel to whom public funds are entrusted for the purpose of making disbursements. Besides disbursing officers, the term includes deputy disbursing officers, disbursing agents, cashiers, agent cashiers, collection agents, paying agents, imprest fund cashiers, and change fund custodians. DOD 7000.14-R, ch. 6, para. 060902.

- I. Relief of DOD Departmental Accountable Officials for Illegal, Incorrect, or Improper Payments. DOD 7000.14-R, vol. 5, ch. 6, para. 060903.C.
  - 1. DOD 7000.14-R, vol. 5 doesn't actually state any standards for relief of departmental accountable officials. Chapter 6, para. 060903.C. merely states that "Accountable individuals appointed [as departmental accountable officials] are responsible for providing accurate information, data or service to a certifying officer to support payment certifications."
  - 2. However, because 10 U.S.C. § 2773a requires fault or negligence on the part of a departmental accountable official in order to subject that person to financial liability to being with, it follows that a lack of negligence, at a minimum, will result in relief of liability.
- J. Judicial Relief – U.S. Court of Federal Claims.
  - 1. Disbursing officers. Under 28 U.S.C. § 1496, the court has jurisdiction to review disbursing officer cases. If the court finds that a loss occurred without the fault or negligence of the disbursing officer, 10 U.S.C. § 2512 requires that the disbursing officer be relieved from liability for that amount, providing: "Whenever the court finds that a loss by a disbursing officer of the United States was without his fault or negligence, it shall render a judgment setting forth the amount thereof, and the General Accounting Office shall allow the officer such amount as a credit in the settlement of his accounts."
  - 2. Any individual. If an agency withholds the pay of any individual, that person may request that the Government Accountability Office report the balance due to the Attorney General, who shall then initiate a suit against the individual. See 5 U.S.C. § 5512(b). By doing this, the individual can get his matter heard in federal court.
- K. Legislative Relief. Private and collective relief legislation.

## V. ESTABLISHING LIABILITY.

### A. DOD Required Action.

1. Before initiating collection for a loss, the appropriate agency must establish the accountable officer's liability "permanently." Lieutenant Colonel S.C. Shoemake, Jr., B-239483.2, 70 Comp. Gen. 616, 622 (July 8, 1991). Permanently establish means that the officer has agreed to repay the loss or the appropriate authority has denied relief.
2. DOD 7000.14-R requires a formal investigation for physical losses of \$750 or more or erroneous payments induced by fraud. The commander may investigate other losses formally as well. See DOD 7000.14-R, vol. 5, ch. 6, para. 060301 and 060503. See also DOD 7000.14-R, vol. 5, ch. 6, sec. 0607 (investigation requirements and procedures).

### B. Statute of Limitations. 31 U.S.C. § 3526(c)(1).

1. The statute of limitations for settling accounts of an accountable officer is three years after agency accounts are substantially complete. See Lieutenant Colonel S.C. Shoemake, Jr., B-239483.2, 70 Comp. Gen. 616 (July 8, 1991); Lieutenant Colonel S.C. Shoemake, Jr., B-239483, 70 Comp. Gen. 420 (Apr. 15, 1991). After this period, the account is settled by operation of law, and an accountable officer has no personal financial liability for the loss in question. Mr. John S. Nabil, B-258735, 1994 U.S. Comp. Gen. LEXIS 950 (Dec. 15, 1994).
2. "Substantially complete" means the time when, absent fraud by the officer, the agency can audit the paperwork upon which the officer based his action. Relief of Anna L. Pescod, B-251994, 1993 U.S. Comp. Gen. LEXIS 991 (Sept. 24, 1993). DOD 7000.14-R includes detailed examples of when the three-year period begins. See DOD 7000.14-R, vol. 5, ch. 6, para. 060802.
3. If the loss is due to embezzlement, fraud, or other criminal activity, the three-year statute of limitations is not triggered until the loss has been discovered and reported. Steve E. Turner, B-270442.2, 1996 U.S. Comp. Gen. LEXIS 75 (Feb. 12, 1996); DOD 7000.14-R, vol. 5, ch. 6, para. 060801.

4. The statute of limitations does not apply if a loss is due to fraud or other criminal acts of an accountable officer. 31 U.S.C. § 3526(c)(2).

## **VI. MATTERS OF PROOF.**

- A. Evidentiary Showing. To qualify for relief from liability for a loss or deficiency under the statutes, an accountable officer generally must prove that he was acting in an official capacity and was either not negligent or that his negligence did not cause the loss. 31 U.S.C. § 3527. Mr. S.M. Helmrich, B-265856, 1995 U.S. Comp. Gen. LEXIS 717 (Nov. 9. 1995).
- B. The “Reasonable Care” Standard.
  1. In determining whether an officer was negligent, the Comptroller General applies a “reasonable care” standard. In the Matter of Personal Accountability of Accountable Officers, B-161457, Aug. 1, 1969 (unpub.).
    - a. Liability results when an accountable officer’s conduct constitutes simple or ordinary negligence. Gross negligence is not required.
    - b. The standard is whether the accountable officer did what a reasonably prudent and careful person would have done to safeguard his/her own property under similar circumstances.
    - c. This is an “objective” standard. It does not vary with such factors as the level of experience or the age of the particular accountable officer concerned. Mr. Frank D. Derville, B-241478, 1991 U.S. Comp. Gen. LEXIS 1488 (Apr. 5, 1991).
    - d. Failure to follow laws/regulations is negligence. Hence, accountable officers must familiarize themselves with applicable laws/regulations. See DOD 7000.14-R, vol. 5, ch.1, para. 010502.

2. That a loss or deficiency has occurred creates a rebuttable presumption of negligence on the part of the accountable officer. This presumption arises from the accountable officer's strict liability for any loss or deficiency. The accountable officer can rebut this presumption of negligence by presenting affirmative evidence that he exercised due care. Serrano v. United States, 612 F.2d 525 (Ct. Cl. 1979); Darold D. Foxworthy, B-258357, Jan. 3, 1996 (unpub.) (loss of vouchers and receipts by imprest fund cashier); Mr. Gerald Murphy, B-249742.2, 1993 U.S. Comp. Gen. LEXIS 1149 (Nov. 24, 1993); Melvin L. Hines, B-243685, 1991 U.S. Comp. Gen. LEXIS 985 (July 1, 1991); To the Postmaster General, B-166174, 48 Comp. Gen. 566 (Feb. 28, 1969).
  3. As noted previously, the previous version of DOD 7000.14-R, vol. 5, ch. 33, para. 3309 and appendix C provided that a presumption of negligence does not apply to acts of DOD "accountable officials." Those portions of volume 5 were deleted in April 2005. The current DOD 7000.14-R is silent as to whether there is any presumption of negligence for departmental accountable officials.
- C. Proximate Cause. If the accountable officer was negligent, the Comptroller General will consider whether the negligence was the proximate cause of the loss or deficiency.
1. If negligence occurred and it was the proximate cause of the loss or deficiency, the Comptroller General may not grant relief from liability. 31 U.S.C. § 3527(a).
  2. If an accountable officer was negligent, but the negligence was not the proximate cause of the loss or deficiency, the Comptroller General may grant relief under the statute. See Captain John J. Geer, B-238123, 70 Comp. Gen. 298 (Feb. 27, 1991).

## **VII. DEBT COLLECTION.**

- A. Collection is pursuant to 31 U.S.C. §§ 3701-11 (Debt Collection Act) and 5 U.S.C. § 5512(a) (allowing offset against government employee or retiree pay). See 5 U.S.C. § 5514 (allowing payment by installment and limiting amount per period to 15%); see also 37 U.S.C. § 1007(a) (governing withholding of military officer pay); 10 U.S.C. § 9837(d) (remission of indebtedness); 10 U.S.C. § 1552 (correction of records).
- B. DOD has published detailed collection procedures. See DOD 7000.14-R, vol. 5, chs. 28-32.

## **VIII. CONCLUSION.**